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OFFICIAL DONATION.

CHURCH LANDS IN PORTO RICO.

Coudert Brothers to Mr. Foraker.

JUNE 10, 1902.

Hon. J. B. FORAKER,
United States Senate.

DEAR SIR: After an interview this forenoon at the Department of State, we beg to suggest that before any action is taken by the Senate on H. R. 14244, for the reservation of certain public lands and buildings in Porto Rico, time be given for the consideration of an amendment which may be submitted or recommended by the President or Secretary of State for the settlement of the titles of the Catholic Church to property in the island on the same basis as underlies the administrative settlement of the same question which has been effected in Cuba to the satisfaction of all concerned. We expect to have the matter presented to the State Department within a few days. You will recollect that Bishop Blenk showed you letters which he had received from the President, the Secretary of War, and Governor Hunt on the subject. The amount of property involved in the pro posed amendment is very small in comparison with that affected by the Cuban settlement.

As the pendency of the House bill above mentioned gives an excellent opportunity for a prompt settlement of this matter, which the President is anxious not to leave longer unsettled, we trust that you will have the goodness to give us the time we need to bring it properly to the attention of your committee.

Yours, faithfully, COUDERT BROS.

Coudert Brothers to the Department of State.

JUNE 11, 1902.

Hon. WILLIAM L. PENFIELD,
Solicitor of the Department of State, Washington, D. C.

DEAR SIR: Referring to the interview which the Right Rev. J. M. Blenk, bishop of Porto Rico, and our Mr. Kennedy had with you on the 9th instant, we beg to inclose the following documents for the consideration of the Department:

1. A letter from the President to the Secretary of War, dated the 2d instant, with an indorsement thereon by the Secretary of War in the form of a letter to the Secretary of State.

2. Church lands in Porto Rico. Memorandum for the Secretary of State, signed by Bishop Blenk and by the undersigned as counsel.

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3. List of the property in possession of the Spanish Government, but belonging to the Catholic Church in Porto Rico when the United States took possession of the island.

4. Copy of H. R. 14244, now pending in the Senate, with a proposed amendment recognizing the title of the Catholic Church to certain property in the island of Porto Rico.

5. Copy of the report of the commissioners appointed to examine the claims of the Catholic Church to property in Cuba, which was made the basis of a settlement between the said church and the Government of the United States.

You will observe that the President described the bishop's business as "very important" and says it "should be concluded without unnecessary delay;" also that the Secretary of War expresses the opinion, after a discussion of the subject with the bishop, "that there are substantial rights to be recognized."

It is, as the Secretary of War suggests, a question of recognition. No new rights or interests would be created by the proposed legislation.

We trust that the Secretary of State may deem it proper to recommend favorable action to Congress or to the Senate Committee on Pacific Islands and Porto Rico, of which Senator Foraker is chairman, and which will have the House bill No. 14244, for the disposition of public lands in Porto Rico, under consideration next Monday. The papers might be sent to the committee with the Secretary's remarks, and printed for the information of Congress. This seems to be the only opportunity to have the matter settled this session.

Thanking you on behalf of the bishop and ourselves for your attention and courtesy, we remain,

Yours, faithfully, COUDERT BROS.

[Inclosure 1.]

The President to the Secretary of War.

WHITE HOUSE,
Washington, June 2, 1902.

MY DEAR MR. SECRETARY:

This will introduce to you the Rev. Bishop Blenk, of Porto Rico. Governor Hunt in his letter of introduction speaks of the bishop as follows:

> He has always been a true and helpful friend of the Government. He is good, strong, influential, and patriotic under all circumstances. We admire him. We have felt the lift of his sterling character in our work. I am indeed glad to tell you that we owe him that gratitude due to an unselfish Christian, whose life and whose services have contributed in a substantial and constant way toward the end for which we are all striving in Porto Rico.

This is the strongest letter I have ever known Governor Hunt to write. From other sources I have heard much of the bishop and of the invaluable nature of his work in Porto Rico. He feels that it is imperatively necessary to reach some such solution of the church property question in Porto Rico as that which we reached in Cuba. May I ask that you have his request carefully examined? I hope that we shall be able to act along the lines he desires in this matter. It is

evidently a very important business, and should be concluded without unnecessary delay.

I would like to have a Catholic American who speaks Spanish appointed as chaplain of the Porto Rico provisional regiment.

Sincerely, yours,

THEODORE ROOSEVELT.

Hon. ELIHU ROOT,
Secretary of War.

The Secretary of War to the Secretary of State.

[Indorsement on the President's letter of June 2, 1902.]

DEAR MR. HAY: This letter is designed to promote the disposition of matters which rest in the State Department, and I beg to introduce Bishop Blenk to you. While Porto Rico was under the War Department I discussed the subject with him and do not doubt that there are substantial rights to be recognized.

Faithfully, yours, ELIHU ROOT.

[Inclosure 2.]

CHURCH LANDS IN PORTO RICO.

[Memorandum for the Secretary of State.]

Prior to the year 1845 the Spanish Government had seized and confiscated a large portion of the property rightfully owned by the Roman Catholic Church in the islands of Cuba and Porto Rico, and afterwards, in order to redress this wrong and make amends as far as practicable for the injustice done, the law of 1845, which is mentioned in the concordat of 1851 between the Holy See and the Spanish Crown, was promulgated. Article 33 of this concordat reads as follows:

There shall be returned immediately and without delay to the same (the religious congregations), and in their representation to the diocesan prelates in whose territory the convents are or were prior to the last vicissitudes, those properties belonging to them which are in the possession of the Government and which have not been disposed of.

In article 38 of this concordat we find the following provision:

Moreover, there shall be returned to the church, immediately, and without delay, all the church properties not comprised in the aforementioned law of 1845, and which have not as yet been disposed of, including the remaining properties of the religious communities of man.

It is to be observed that the exclusion of the properties "not comprised in the aforementioned law of 1845" from the restitution agreed upon and ordered in the concordat of 1851, was made because the properties included in that law of 1845 had been returned to the church. The law of 1845 reads as follows:

ONLY ARTICLE. The properties of the secular clergy, not disposed of, and the sale of which was ordered suspended by royal decree of July 26, 1844, are returned to the same clergy.

The Spanish Government bound itself in the concordat of 1851 to pay the endowment for worship and for the clergy in the manner stated in the various articles, especially in articles 28 to 40, and in

fulfillment of this obligation it was paying in the island of Porto Rico the amounts of the appropriations made from year to year in the ecclesiastical budget.

After the promulgation of the concordat of 1851, and to attain more effectively the accomplishment of its purposes, the concordat of 1859 between the Holy See and the Spanish Crown was promulgated, the express object of which was "to perpetually secure the church in the peaceful possession of her properties and to forestall all motives for violating the solemn concordat entered into on March 16, 1851," Her Catholic Majesty's Government promising "that on future no sale, exchange, or other kind of disposal of the said properties would be made without the necessary authorization from the selfsame Holy See and to definitely carry into effect the plan for the endowment for worship and the clergy ordered in the concordat." (See articles 1 and 2 of the concordat of 1859.)

Pending the actual return of the properties in question to the church, the Government of Spain kept paying to the proper church authorities the amount of the appropriations made in the ecclesiastical budget by way of compensation for the continued retention and use of these properties. This was the situation in Porto Rico when the island was occupied by the military forces of the United States in the summer of 1898. The military authorities of the United States took possession of the lands in question, including the convents of Santo Domingo and San Francisco in the city of San Juan and continued to make the proper payments to the church until October, 1898.

The purpose of the proposed amendment to H. R. 14244, which has passed the House and is now pending in the Senate, is to convert the equitable interest of the church and its right to the return of these properties, as recognized in the aforesaid concordats, into a legal title and actual possession of the same. Of course, the Government of the United States can not enter into the relations or assume the obligations and discharge the trusts which subsisted between the Holy See and the Crown of Spain in respect to these lands at the time of the cession. Such relations are precluded by the constitutional separation of church and state, but instead of this inherent inability on the part of our Government being any reason for hesitation in putting the church in possession of these properties, it is, on the contrary, a reason of the strongest kind why the title of the church to the property should be recognized and she should be put in possession of it without any delay. The church should suffer no disadvantage from the change of sovereignty in respect of its property rights, legal or equitable. The treaty of peace, as well as the law of nations, guards the church against such injustice.

> It is hereby declared [says Article VIII of the treaty] that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, can not in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individual may be.

Article 38, Title II, Chapter II, of the civil code of Spain, which was in force in Porto Rico at the time of the cession of the island to the United States, reads as follows:

> Juridical persons may acquire and possess property of all kinds as well as contract obligations, and institute civil or criminal actions in accordance with the laws and rules of their establishment.

The church shall be governed in this particular by what has been agreed upon by both powers (Spain and the Holy See); and educational and charitable institutions by the provisions of special laws.

There can be no question that the church is a juridical body, and as such can hold and convey all kinds of property. This capacity of ownership is demonstrated in the report of the commissioners who were appointed to examine the question of the rights of the church in Cuba, and in that same report is to be found a full discussion of the facts and principles involved in the settlement which was made between the church and the Government of the United States in its executive capacity prior to the establishment of the Cuban Republic. A copy of that report is annexed to this statement and should be examined in the consideration of this matter, inasmuch as the church in Porto Rico contends that its rights should be determined by the same principles which were applied in the settlement of the rights of the church in Cuba.

It will appear from the annexed statement of the properties belonging to the church in Porto Rico that the value involved is almost nominal compared with the value of the property which was held to belong to the church in Cuba.

As a settlement of this much larger interest in Cuba has been made and carried into effect by the President, who had control of the island pending the establishment of the Cuban Republic, it is exceedingly desirable that a settlement of the rights of the church in Porto Rico, which had been annexed to the United States, and is under its sovereign jurisdiction, should be made without any further delay, and the fact that a bill is now pending in Congress for the disposition of the public lands in that island seems to furnish an opportunity for an early legislative settlement of this important matter.

The recognition and protection of the property rights of the Catholic Church in Cuba, Porto Rico, and the Philippines by our Government will be appreciated not only by the population of these islands but also by all the Catholics of the United States and will undoubtedly promote the peace and prosperity which are everywhere dependent on respect for the law.

Respectfully submitted.

COUDERT BROTHERS,
CRAMMOND KENNEDY, *Counsel.*

Rev. J. H. BLENK,
Bishop of Porto Rico,

WASHINGTON, D. C., *June 11, 1902.*

[Additional memorandum.]

Referring to the memorandum on this subject which was submitted to the Secretary of State by the Right Rev. J. H. Blenk, bishop of Porto Rico, and the undersigned as his counsel, on the 11th of June, 1902, we beg leave to invite attention to the long line of decisions of the Supreme Court of the United States, construing those provisions of treaties and acts of Congress for the protection and ascertainment of the rights of property of the inhabitants of territories which have been ceded to the United States. These acts and decisions deal with claims that arose under the treaty of 1803 with France, 1819 with Spain, and 1848 with Mexico. Those decisions show that what Bishop Blenk asks on behalf of the church is nothing more than it is the duty and has long been the usage of the United States to grant.

In Percheman's case (7 Pet., 51) Chief Justice Marshall said that the provision in the treaty of 1819 with Spain for the protection of private property was but an expression of the existing law of nations on the subject, and that even in cases of conquest it was very unusual for the conqueror to do more than displace the sovereign and assume dominion over the country.

Modern usage of nations [said the Chief Justice] which has become law would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged if private property should be generally confiscated and private rights annulled on a change in the sovereignty of the country. The people change their allegiance, their relation to their ancient sovereign is dissolved, but their relations to each other and their rights of property remain undisturbed.

In United States *v.* Clarke (16 Pet., 228, 232) the Supreme Court said:

That Spain had the power to make grants founded on any consideration and subject to any restrictions within her discretion is a settled question. If the act was binding on that government, so it is on this, as the successor of Spain. All the grants of land, made by the lawful authorities of the King of Spain, before the 24th of January, 1818, were by the treaty ratified and confirmed to the owners of the land. Such is the construction given to the eighth article by this court in *Arredondo's* case (6 Peters, 706), and in *Percheman's* case (7 Peters, 51); that is, *imperfect titles were equally binding on this Government after the cession as they had been on the Spanish Government before.*

In United States *v.* Kingsley (12 Pet., 476) the court said:

In the construction of the Florida treaty it is admitted that the United States succeeds to all those equitable obligations which we are to suppose would have influenced his Catholic majesty to secure their property to his subjects, and which would have been applied by him, in the construction of the conditional grant, to make it absolute; and further that the United States must maintain the rights of property under it, by applying the laws and customs by which those rights were secured before Florida was ceded, or by which an inchoate right of property would, by those laws and customs, have been adjudicated by the Spanish authority to have become a perfect right.

In the lessee of Pollard's heirs *v.* Kibbe (14 Pet., 353), in which the earlier cases are reviewed, the court said:

When territory is acquired by a cession or relinquishment of one nation to another, or by conquest, the rights of private property are protected by the law of nations, according to the law of the territory, though no stipulation is contained in the act of cession or relinquishment; and even in case of conquest no other change is effected except as to government; and that when a stipulation for property is required it is never refused, and when made is sacredly observed.

[Inclosure 3.]

LIST OF THE PROPERTY IN POSSESSION OF THE SPANISH GOVERNMENT BUT BELONGING TO THE CATHOLIC CHURCH IN PORTO RICO WHEN THE UNITED STATES TOOK POSSESSION OF THE ISLAND.

A farm in San German, comprising about 88 acres and valued at $3,500.

A farm in the same district, comprising about 1,400 acres and valued at $27,000.

A farm in Yauco, comprising about 60 acres and valued at $360.

The convent of Santo Domingo on Plaza Ponce in the city of San Juan and the lot on which it stands, including the central courtyard, valued together at $75,000.

The convent of San Francisco, on Plaza San Francisco, in the city of San Juan, and the lot on which it stands, including the central courtyard, valued together at $100,000.

Censos, or ground rents, of which the government of Porto Rico has a record, the capital of which does not exceed $30,000, and the yearly income $1,500, subject to redemption in each case on payment of the principal.

[Inclosure 4.]

[H. R. 14244, Fifty-seventh Congress, first session. In the Senate of the United States, May 19, 1902. Read twice and referred to the Committee on Pacific Islands and Porto Rico.]

AN ACT authorizing the President to reserve public lands and buildings in the island of Porto Rico for public uses, and granting other public lands and buildings to the government of Porto Rico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to make, within one year after the approval of this act, such reservation of public lands and buildings belonging to the United States in the island of Porto Rico for military, naval, light-house, marine-hospital, and other public purposes, as he may deem necessary, and all the public lands and buildings, not including harbor areas and navigable streams and bodies of water, owned by the United States in said island and not so reserved be, and the same are hereby, granted to the government of Porto Rico, to be held or disposed of for the use and benefit of the people of said island: *Provided*, That said grant is upon the express condition that the government of Porto Rico, by proper authority, release to the United States any interest or claim it may have in or upon the lands or buildings reserved by the President under the provisions of this act.

[Proposed amendment to be inserted after line 4, page 2, H. R. 14244.]

And also provided, That any and all property which on the military occupation of the island of Porto Rico by the forces of the United States in July, 1898, was held in usufructuary possession by the Government of Spain or the Spanish authorities in Porto Rico, and which, including certain "censos" or ground rents, belonged to the Holy Roman Catholic Church under or by virtue of any concordat or other agreement between the said church and the Crown of Spain in force at the time aforesaid, shall be, and shall be henceforth regarded and treated as, the property of the said church in fee simple, and may be registered, together with the temples, chapels, presbyteries, and other ecclesiastical buildings and grounds which were and are in the peaceable possession of the said church in Porto Rico, in the same manner and with the same effect as other property of the same kind under the laws in force in the said island.

[Inclosure 5.—Translation.]

COMMISSION TO INVESTIGATE INTO AND REPORT UPON THE CLAIMS TO PROPERTIES AND PROPERTY RIGHTS OF ALL KIND AND CLASSES FILED BY THE BISHOP OF HABANA.

Maj. Gen. LEONARD WOOD,
Military Governor of the Island of Cuba.

SIR: The commission appointed to investigate into and report upon the claims to properties filed by the bishop of Habana has the honor to set forth:

That according to article 4 of Orders No. 321,[a] c. s., the report shall be in detail in the case of each property or parcel of property, and of each right in the property (jus in re), claimed by the bishop, but the commission can not now comply with this order, because it is not as yet in possession of the complete list of the church property held by the State. The department of finance has been requested to furnish this list, and the said department has begun to do so. On the other hand, the claims of the bishop are comprised in several general points, from which it is possible, without further delay, to draw conclusions which have to serve as precedent in order to study separately what pertains to each property and to each right, or to abstain from making this study in case same should prove to be unnecessary.

The commission shall, therefore, express its opinion on the fundamental question, considering same on the grounds of strict justice.

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[a] No. 321.

HEADQUARTERS DIVISION OF CUBA,
Habana, August 15, 1900.

The military governor of Cuba directs the publication of the following order:

I. Pedro González Llorente y Ponce, Emilio Iglesias y Cantos, Juan Victor Pichardo y González are appointed to constitute a commission to investigate and report upon the claims of property and property rights of every kind and nature made by the bishopric of Habana.

II. To carry out the objects of said commission it is hereby authorized and empowered to call witnesses, to take testimony under oath or affirmation, to call for the production of all private and public documents, and to hear evidence and arguments on behalf of persons or corporations directly interested.

III. All notaries, registrars of property, and other officials shall produce the documents or records, or certified copies thereof, as called for by the commission, and shall receive no fees therefor.

IV. The report of the commission shall be in detail as to each piece or parcel of property and as to each specific property right claimed by the bishopric of Habana, setting forth its findings of fact and its conclusions of law thereon, and shall, if the commission consider it necessary, make such general or specific recommendations as justice may require.

V. A refusal on the part of any person or corporation to appear and testify or to produce documents will be punished by the courts in like manner as in similar cases of disobedience of the mandates of a judge or tribunal.

VI. Such counsel, stenographers, and assistants as may be found necessary will be appointed hereafter.

J. B. HICKEY,
Assistant Adjutant-General.

No. 390.

HEADQUARTERS DIVISION OF CUBA,
Habana, September 25, 1900.

The military governor of Cuba directs the publication of the following order:

Juan O'Farrill is hereby appointed as member of the commission instituted by Order No. 321, current series, from these headquarters, vice Emilio Iglesias, resigned.

J. B. HICKEY,
Assistant Adjutant-General.

The church, as a juridical person, has hold and holds the right to acquire, possess, or transfer all kinds of properties. The church has never been denied this right in Spain; rather, on the contrary, in all the provisions covering these matters this right has been recognized in the church. The provision to which the highest value is attached is the concordat between His Sanctity Pope Pius IX and Her Majesty Queen Isabella II, entered into on March 16, 1851. Article 33 of this agreement reads as follows:

> There shall be returned, immediately and without delay, to the same (the religious congregations), and in their representation to the diocesan prelates in whose territory the convents are or were prior to the last vicissitudes, those properties belonging to them which are in the possession of the Government and which have not been disposed of.

Article 36 reads in part as follows:

> The prelates, in the names of the religious communities that own property, etc.

Article 40 reads as follows:

> It is declared that the aforesaid properties and revenues belong in ownership to the church.

The agreement made on August 25, 1859, also between the Pontiff and the Queen of Spain, contains a most solemn, absolute, and explicit statement on this point.

Article 3 reads as follows:

> Firstly, Her Majesty's Government recognizes, again and formally, the unrestricted and full right of the church to acquire, retain, and enjoy the ownership of all kinds of properties, without limitation or reserve; and any orders or laws contrary to this are consequently abrogated, especially such parts of the law of May 1, 1855, as are in opposition to this agreement.

And even the same law of 1855, abrogated by this agreement of 1859 in such parts as might be in opposition to same, in which certain properties were declared to be offered for sale, mention is made of those properties "belonging to the church, those belonging to mortmains." There is no law, royal order, or royal decree that gives the State the ownership of those properties.

It is not necessary to make a history here of all the provisions made by the Spanish Government relative to the aforestated properties. These provisions, divergent in some cases and contradictory in others, changing with the varying spirit that animated the persons who made them, were always the object of serious and continued controversies between the Government and the church. The most authorized solution of this problem was at last found in the concordat of 1851 and in the additional agreement of 1859. In these it was desired to adjust the consideration which, from a standpoint of financial convenience, some of the accomplished facts should receive, with the respect for rights that had been violated or that might in future be violated; and the leading thought which predominated was that a lasting, necessary, and just compensation be made.

The principal stipulations, in so far as they refer to the point at issue in the opinion here rendered, were the following:

> There shall be returned, immediately and without delay, to the same (the religious communities), and, in their representation, to the diocesan prelates in whose territory the convents are or were prior to the last vicissitudes, the properties belonging to them (the religious communities) which are in the possession of the Government and which have not been disposed of. But His Holiness, taking into consideration the actual condition of these properties and other particular circumstances, orders that the prelates, in the names of the religious communities that own property, pro-

ceed immediately and without delay to sell the aforestated properties at public auction, held in the manner prescribed in the sacred canons, allowing persons appointed by Her Majesty's Government to take part in same in order that, with the proceeds of this sale, the expenses for worship and other general expenses might be attended to with more uniformity. The proceeds of these sales shall be converted into nontransferable State consols (inscripciones, deeds, or instruments with which a perpetual revenue is collected from the State) at 3 per cent, the capital and interest of which shall be distributed among the aforesaid convents in proportion to their needs and financial standing, in order to attend to the aforestated expenditures and to the payment of the pensions of the nuns (religiosas) who may be entitled to receive same, without affecting the Government supplying, as hitherto, the necessary amount for the complete payment of the said pensions up to the death of the pensioners. (Article 35.)

Moreover, there shall be returned to the church, immediately and without delay, all the church property not comprised in the aforementioned law of 1845, and which have not as yet been disposed of, including the remaining properties of the religious communities of men. But in view of the actual conditions of both these properties and of the evident profit that the church would derive therefrom, the Holy Father orders that their capital be immediately and without delay converted into nontransferable State consols ("inscripciones"), at 3 per cent, observing exactly the form and rules established in article 35 relative to the sale of properties of nuns (religiosas). (Article 38.)

It is to be observed that the exclusion of the properties "not comprised in the aforementioned law of 1845" from the restitution agreed upon and ordered in the concordat is made because the properties included in that law, which is that of April 3 of the said year, had been returned. The law reads as follows:

Only Article.—The properties of the secular clergy not disposed of and the sale of which was ordered suspended by royal decree of July 26, 1844, are returned to the same clergy.

The State bound itself in the concordat to pay the endowment for worship and for the clergy in the manner stated in various articles, especially in articles 28 to 40, and on this score it has been paying in this island the amounts of the appropriations made in the ecclesiastical budget.

The essential objects of the agreement of 1859 were, as was textually stated, "to perpetually secure the church in the peaceful possession of her properties, and to forestall all motives for violating the solemn concordat entered into on March 16, 1851," Her Catholic Majesty's Government promising "that in future no sale, exchange, or other kind of disposal of the said properties would be made without the necessary authorization from the selfsame Holy See, and to definitely carry into effect the plan for the endowments for worship and the clergy ordered in the concordat." (Articles 1 and 2.)

In article 3 Her Majesty's Government recognized again and formally the right of property which unrestrictedly and fully belongs to the church, such laws or orders in conflict with this agreement being consequently abrogated by same. In article 4 Her Majesty's Government recognizes the church as the absolute owner of each and every one of the properties returned to her by the concordat. But having taken into consideration the state of deterioration of those properties which have not as yet been disposed of, of the difficult administration of same, and of the various, contradictory, and inexact estimates as to the value of the rental of same, all of which circumstances have thus far made the endowment of the clergy uncertain, and at times fall short, Her Majesty's Government has proposed an exchange to the Holy See, giving bishops the power to determine, in accord with their chapters, the price of the church properties situated

in their respective dioceses, the Government offering in exchange for the cession of the said property to the State as many nontransferable consols of Spain ("inscripciones intransferibles de la deuda publica consolidada de España") at 3 per cent as might be necessary to cover the total value of the said properties.

Article 42 of the concordat provides that—

> The Holy Father, at the request of Her Catholic Majesty, and in order to care for the public peace, decrees and declares that those who during the past state of affairs might have bought, in the dominions of Spain, properties, in accordance with the civil orders then in force, and who are in possession of same, and those who have succeeded or are succeeding the said buyers in their rights, shall in no time or manner be molested by His Sanctity, or by the Sovereign Pontiffs, his successors; rather, on the contrary, both they and their successors shall securely and peacefully enjoy the ownership of those properties and the emoluments and revenues of same.

The permanent force of those provisions was declared in article 45 of the concordat. By virtue of this concordat all laws, orders, and decrees published in any manner in the dominions of Spain in conflict with same shall be considered abrogated, and the same concordat shall henceforth be forever in force as a law of the State in said dominions. In her decree, dated November 26, 1852, the Queen of Spain, addressing the Captain-General, governor of this island, said:

> Although the last concordat entered into with the selfsame Holy See refers chiefly to the personnel, circumscription, and régime of the churches of the peninsula, it, however, extends in cases of acts of the Government to all my dominions, as is expressly stated in several of its first articles, and most especially in article 42, in all that relates to the disposal of church property.

The concordat therefore constitutes the principal legal grounds in this affair, and all the provisions made thereafter have had to be governed by the concordat, its aims, and the rules laid down in same. If this had not been done, if the Queen of Spain had issued an order, if the Cortes had enacted and the Queen sanctioned an authorized law regarding the properties of the church, somewhat contrary to the concordat, that order or law would have been void, because the concordat is a treaty which can not be abrogated by a law or by a public royal order; it is, as everybody knows, a treaty that constitutes a bilateral contract, in which two or more contracting parties remain equally bound, and it is evident that the treaty would be a mockery if one of these contracting parties could lawfully, by merely enacting a law for its dominions, annul the obligations which have been solemnly contracted, and annul the rights of the other interested parties also.

There may be sat down the principal, evident, indisputable, and never-contradicted proposition, that the provisions made by the Spanish Government have respected in all parts, more or less, the essential principle or condition of that solemn agreement, to wit: That a compensation which would consist in the support of the worship and the clergy; that is to say, that the State should have the right, so long as it complied with the correlative obligation, the obligation with which it could not fail to comply without immediately losing the right which it enjoyed only by complying with same, was necessarily attached to the benefit that the State had derived or was deriving from the church properties, through the sales which it had made of many of these, and which sales were confirmed by the agreements entered into in the concordat.

The Spanish Government has also recognized and proclaimed the truth of such a well-grounded and just doctrine.

Mr. Fugenio Montero Rios, minister of grace and justice, stated in his preliminary remarks when presenting to the Cortes, on October 1, 1871, the budget bill for the payment of church obligations—

> The necessity of indemnifying the church for the properties which at different times have been taken from her by the State, is the foundation of the obligation contracted by the State to support the worship and the clergy of the Catholic religion.

This explains why the church received what the treasury delivered to her for worship and the clergy.

All appropriations for this purpose ceased since January 10, 1899, and the church found itself without pension and without property. In view of this his grace the bishop of Habana filed his claims.

His grace, the bishop, filed claims for the payment of a definite indemnity for the property disposed of, that would take the place of the indemnity called "the budget for the worship" (Presupuesto de Culto), and the basis of which shall be decided upon by the state and the church.

The undersigned do not think that such petition can be made to persons who neither sold the properties nor have been parties to the treaty made with regard to same; or who could not, consequently, violate obligations which they had not contracted. It is a question here of personal liabilities; the writers do not deny the right of the church to ask for this indemnity; what they deny is, that the liability in this matter has to rest with any other person or entity than that of Spain.

The object of the other principal claim is—

> The return of all those properties of ecclesiastical origin, held by the state, no matter what might be their nature or the motives for acquiring same.

The legal and exact, entirely exact precedents stated, are more than sufficient to allow one to form a just opinion on this matter. With exception of the cases stated in the concordat, there is no reason why the Spanish Government should be in possession of any property of the church. All the properties belonging to her, disposed of by the state prior to the concordat, remained, by the declaration and promise of the sovereign pontiff, irrevocably sold. It is not a question of these properties; it is a question of those that were not sold and which the Spanish Government possessed in the island without any other reason than that of having occupied same. They were like the onces which made Queen Isabella II say, in a decree stated November 26, 1852:

> They were effected by the superior authorities of the island during my minority and without the property authorization of my Government.

But let it be supposed that the Government had acquired them through an exchange suggested by the respective prelate; let it be supposed that the occupation had not been a mere fact, but that in order to effect same, all the stipulations in the concordat had been complied with. Let it be supposed that the value of those properties had been invested so that the revenues derived from same went to the clergy or in order that they might be included in the compensation; from the moment that the compensation had ceased to exist, by what right, with what title or with what justice, did the Government continue to hold those properties? If those properties not disposed of, and the ownership and possession of which belong to the church, are not in the possession of the church, they are held by the state or by

some person, be it who it may, as some one else's property, which according to the phrase in the Roman law, calls for its owner ("clamat Domino").

In order to maintain the contrary, to maintain that the Kingdom of Spain, or any other entity whatever, could continue to hold without making the payments agreed upon for the possession of the thing, it would be necessary to demonstrate that of the two parties that had made a contract, imposing reciprocal obligations on themselves and conferring correlative rights on one another, one of the parties could lawfully cease to comply with the obligations and continue to enjoy the rights, while the other party, completely deprived of rights, would yet be bound with the obligations. Such an opinion would be one of the greatest absurdities imaginable; it would be in the most violent opposition to a principle of justice so elementary, so evident, and so necessary that even without treaties or laws it is written in the consciences of all men.

The church does not require to present with the claims herein referred to title deed to each property held by the State, because the State has always acquired the possession, as Mr. Montero Rios said, "through expropriation," or as may be said in techinal, juridical language, "through spoliation."

The church has been positively despoiled, and spoliation is a title for restitution; restitution must, before all things, be made to the despoiled. It is so proclaimed by the old principle "spoliatus ante omnia est restituendus," and if the State or any other entity has anything to advance against this let it do so at the proper time; that is to say, after the said restitution, and then a special examination will be made, and it will be seen whether it has a greater title to be determined property or right in the property (jus in re) than the naked right of occupation.

The Commission, therefore, considers that the Bishop's claim is just—just in every part.

The reasons for the return are, if possible, stronger, if this return is considered from a standpoint of what especially relates to the expropriations of the church properties made by the Treasury Department during the year 1899 and the current one, i. e., during the military occupation by the Americans. The church was in peaceful possession; she collected revenues on a number of annuities (censos), and the Treasury Department, during the American administration and occupation, though the treaty of Paris was then in force and though this Government had promised to protect those who were in peaceful possession, not only fails to comply with this but, in the name of this very Government, despoils the church, who is the possessor in fact, the possessor in right, and the peaceful possessor.

The bishop, moreover, asks the payment of all the rents or revenues from January 1, 1899, of all these properties held by the State. This petition is the logical consequence of the former, if the church had to be put back into possession from January 1, 1899, because from that date the appropriations for the clergy and worship ceased to be paid to her; she must also receive the products of the said properties from the same date; because, as the accessory goes with the principal, an absurd inconsistency would be incurred, and a new spoliation would be patronized, if it were pretended that though the

church must be put back into possession, the Treasury Department and not the church was to be the one that should take and appropriate the revenues.

From the foregoing the commission draws the following conclusions:

1. That the claim for indemnity to the church for the sale of the properties which Spain disposed of can not be made to any other entity than that of Spain.

2. That the petition for the return to the church of all the properties of ecclesiastical origin held by the State, no matter what their nature might be, is a just one.

3. That it is also just that the church be credited with the revenues of those properties from January 1, 1899, until this matter is difinitely settled.

The bishop makes two urgent petitions—that the seizures cease immediately, and that there be returned without delay to the entities or persons dispossesed all the properties or annuities (censos) or properties of any other kind which by the title of seizure may have been taken by the authorities or officials of the State during the year 1899 and the current one. For the same reasons previously set forth the commission believes that the two petitions to which reference has just been made are well-grounded and just.

This is the judgment of the undersigned, in which they may, perhaps, have fallen into error, but having used every effort to the best of their ability in order to avoid this they believe that they have complied with their duty, and their consciences rest easy.

HABANA, *October 27, 1900.*

Mr. Penfield to Mr. Foraker.

DEPARTMENT OF STATE,
Washington, June 23, 1902.

Hon. JOSEPH B. FORAKER,
United States Senate.

DEAR SIR: Mr. Kennedy informs me that your committee meets at half past 10 this morning, and on account of the shortness of the time I hand to you by Mr. Kennedy the original telegram from Governor Hunt, with reference to certain ecclesiastical properties in Porto Rico for your consideration, with the understanding that Mr. Kennedy is to return the telegram to the files of the Department. Secretary Hay has not been able to confer with the President on the subject, and is unable, therefore, to make any recommendation at present. Whether the President would prefer that the reference of the matter should be made to him for final decision or that it should be made to the Secretary of State or to the Attorney-General or to Congress, I am unable to say.

The matter is submitted for your consideration.

Very truly, yours,

W. L. PENFIELD.

LB JL '04

The Secretary of State to Governor Hunt.

JUNE 12, 1902.

THE GOVERNOR OF PORTO RICO,
San Juan, P. R.

SIR: I have the honor to inclose herewith a copy of a letter from Messrs. Coudert Brothers and copies of its accompanying documents, relative to certain property claimed by the Catholic Church in Porto Rico.

You will examine the inclosed copies of House bill No. 14244 and the added proviso and report without delay to the Department by cable in regard to their passage.

You will also suggest any changes or amendments in the form or substance of the bill which you may find advisable.

I have the honor to be, sir, your obedient servant,

JOHN HAY.

(Inclosures: From Coudert Brothers, with accompanying papers, June 11, 1902.)

Governor Hunt to the Secretary of State.

[Telegram.]

SAN JUAN, P. R., *June 20, 1902.*

Secretary HAY, *Washington:*

Your letter June 12 pertaining church property received. We heartily approve House resolution No. 14244 as passed by House; but proposed Senate amendment unwise without providing for investigation first. It would deprive Government of certain valuable properties which have not been in possession of church for many years, if even [sic] and which have been occupied by military and civil governments ever since American invasion, title to which should not be conceded in any persons or organizations unless established after investigation of past history and present claims. We are most anxious for early adjustment, and believe the fairest and most expeditious method would be by substituting for proposed Senate amendment following clause:

Provided further, That the President is hereby authorized to appoint a commission of three persons whose duty it shall be to make careful investigation into titles and claims, legal or equitable, of the Holy Roman Catholic Church in and to any and all real property situate within Porto Rico and claimed respectively by said church and the Government of the United States, or of Porto Rico or any local government thereof, and to make findings and conclusions with respect to the said property or any part or parts thereof and thereafter to advise such recognition, disposition, and settlement as may to said commission seem just and equitable and in conformity with the provisions of the treaty of Paris. The said commission shall make full report of its examinations and findings, together with its opinion, to the President within six months after its first sitting; and if the President approve such report, or any part thereof, he is hereby authorized and empowered to deliver possession to the said church of any and all real property or any part thereof described in said report as that which properly belongs to said church, and thereafter any property so delivered by order of the President may be registered as church property in the same manner and with the same affect [effect] as other property of the same kind under the laws in force in the said island. The salaries of the said commission shall be in such sum as the President may fix. The commission shall organize at San Juan the first Monday in October and it is hereby made the duty of the governor of Porto Rico to furnish a suitable place for them to hold their sessions.

HUNT, *Governor.*

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